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ABSTRACT

Eleven publications are reviewed dealing with tenure laws, establishing criteria for teacher evaluation, due process, relevant state laws, legal case studies, remediation, and the principal's role. The literature agrees that dismissal of tenured teachers is possible if evaluation criteria and evidence of incompetence are clear and if administrators adhere strictly to state law and due process in the dismissal proceedings. (WD)

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THE BEST OF ERIC

ON EDUCATIONAL MANAGEMENT

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ERIC Clearinghouse on Educational Management

Dismissing Incompetent Teachers

1 **Cramer, Jerome.** "How Would Your Faucets Work If Plumbers Were Shielded by Tenure Laws?" *American School Board Journal,* 163, 10 (October 1976), pp. 22-24. EJ 146 468.

"It is a deplorable truth," says Cramer, "that in most states the process of sacking a teacher is as complicated—and sometimes as horrifying—as a Kafka nightmare." In Oklahoma, for example, a teacher can drag a school board through "a local hearing, a meeting of the state's professional practices commission, and then a hearing before the state board of education." And *then* the teacher can begin a judicial process that can go all the way to the state supreme court.

Tenure laws are still clung to by most teachers, even though the principles of due process that they guarantee are now well established in common law. Most school boards, states Cramer, have quit trying to abolish tenure laws and instead are working to improve them. Recent surveys indicate that administrators want probationary periods extended to five or more years, and tenure to be renewable every five years.

School boards *are* learning how to dismiss incompetent teachers within the present legal framework, however, by using evaluation and record-keeping procedures that ensure due process for the teacher. Many teacher unions support this approach to dismissal. In Iowa, for example, both the major teachers union and the school boards association support the evaluation clause of a new continuing contract law.

This law stipulates the procedures for evaluation—including minimum number of evaluations and designated evaluators—and requires that the criteria for judgment be known to the teacher. The evaluation information must also be fully accessible to the teacher, and the evaluators and teacher must sign an evaluation form after each evaluation. In other states, teachers hesitate to back strong statewide evaluation laws, fearing that a bad evaluation law could be used as a political weapon to destroy unions.

2 **Downey, Gregg W.** "How to Get Rid of Your Bad Teachers and Help Your Good Ones Get Better." *American School Board Journal,* 165, 6 (June 1978), pp. 23-26. EJ 181 474.

"Believe it or not," says Downey, "even the most stringent tenure laws do not oblige school systems to retain unsatisfactory teachers" as long as those teachers fail to satisfy "essential criteria" established by the board. Though a difficult task, the details of these criteria should be agreed on by all affected parties, including board members, administrators, and teachers. Consensus could be achieved by first convening a representative task force to develop the proposed criteria for later board approval. Downey suggests several possible criteria, which in today's circumstances will necessarily be a "blend of subjective and quasi-objective yardsticks."

Essential to the teacher evaluation process is thorough and continuous documentation. Written and dated evaluations signed by both principal and teacher should be kept on file, because undocumented material cannot be used in legal proceedings.

When termination proceedings are begun, the board and principals should "have a clear idea of the teacher's recourse to appeals," and should be prepared for appeals with both solid documentation and effective testimony from the building-level administrator. In addition, the board and administrators, with the help of legal counsel, should decide on the most effective language to use in final warnings and notices.

Downey strongly recommends inservice training for principals on teacher dismissal, since they bear the brunt of the burden in the legal proceedings. He concludes with a short discussion of a last resort ploy that can, in many cases, save the district money—buying out the teacher's contract.

3 **Leichner, Edward C., and Blackstone, Sidney.** "Teacher Dismissal and Due Process." *Georgia Association of Middle School Principal's Journal,* 1, 1 (Spring 1977), pp. 51-69. 20 pages. ED 145 512.

In the past, when American society was much more unified in its goals than it is today, educators could—and often did—act in an arbitrary manner in teacher dismissal cases. Starting with the civil rights movement of the 1960s, however, the courts recognized that "teachers do not surrender their personal rights when they sign a contract to teach school."

Today, teacher dismissal laws—designed to ensure equity and equal protection—specifically define both teachers' rights and administrators' responsibilities in dismissal cases. In this article, Leichner and Blackstone review the history and legal development of both nonrenewal and dismissal laws and offer advice to educators contemplating dismissal actions.

Supreme Court actions in 1972 distinguished between the due process rights that must be afforded to tenured and nontenured teachers. When a nontenured teacher's contract is not renewed, a hearing is not required unless the nonrenewal decision deprives the teacher of either a "liberty" or a "property" interest. Any statement

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offered to the teacher must be carefully worded, the authors caution, to avoid charges that it damages "the teacher's standing and association in the community."

When dismissing tenured teachers, due process procedures must be followed, because the teacher is considered to have a "property" interest in continued employment. Teachers who have been reemployed for a number of years by the same board of education can be considered to be tenured by the courts, whether or not a formalized tenure policy exists. And, caution the authors, probationary teachers may be considered to have the same property interest "if employment practices clearly imply a promise of continued employment."

4 **McDaniel, Suzanne H., and McDaniel, Thomas R.** "How to Weed Out Incompetent Teachers without Getting Hauled into Court." *National Elementary Principal,* 59, 3 (March 1980), pp. 31-36. EJ 219 612.

Existing state laws governing the discharge and decertification of teachers are often so complex and time-consuming that few administrators are willing to remove incompetent teachers from the classroom. The unpleasantness of this task, however, can be minimized with a clear knowledge of state laws and the helpful suggestions provided in this article.

State laws concerning dismissal vary considerably from state to state; the authors have chosen to carefully examine South Carolina's dismissal laws as an instructive example for administrators in other states. In 1974, the South Carolina legislature passed the "Employment and Dismissal Act" to guarantee just cause and due process in dismissal cases and updated a similar law regarding decertification. The authors outline these laws in some detail, particularly in regard to the just causes that can be used as grounds for dismissal. Included are six questions established by the courts that must be answered in the affirmative before just cause can be established.

The authors recommend that principals in any state wishing to dismiss incompetent teachers "should keep substantial written files on all teachers who have obvious deficiencies or shortcomings." The files must include documentation of deficiencies as well as records of several observations and followup conferences, "so that a pattern of deficiency or incompetence can be established."

This requirement, the authors admit, makes the principal into a critic and evaluator instead of an instructional leader. Curriculum consultants or assistant principals may help fill the instructional leader role, but the authors recommend that the principal retain the role of an evaluator, "as the direct agent of the board and the superintendent in the school."

5 **Munnelly, Robert J.** "Dealing with Teacher Incompetence: Supervision and Evaluation in a Due Process Framework." *Contemporary Education,* 50, 4 (Summer 1979), pp. 221-25. EJ 213 501.

Many teachers and laymen "honestly believe that teachers cannot be dismissed for incompetence or ineffectiveness" by school boards or courts of law. But the courts, says Munnelly, are not interested in preventing the dismissal of incompetent teachers. Instead, they are primarily concerned with assuring that due process procedures are followed.

In most cases, in fact, "the courts have tended to steer clear of making judgments about a particular teacher's competence, preferring whenever possible to accept the judgment of the local school administrators and school boards." Most cases in which school boards have lost dismissal appeals, continues Munnelly, have resulted from failure to follow due process procedures.

Due process is a constitutional right, guaranteeing fair procedural protection to all individuals subject to serious public action against them. Tenure is a specific guarantee of due process

for teachers and was developed as a reform measure "to counteract the corruption of the spoils system" that flourished around the turn of the century.

Due process requires that teachers know clearly what standards of performance are expected by supervisors. It also gives teachers the right to be given appropriate feedback about their teaching, the right to a chance for improvement and assistance for that improvement, and the right to adequate time to carry out the improvement.

Administrators need not go out of their way to provide due process, contends Munnelly, for it goes hand-in-hand with effective supervision and evaluation. In fact, there is "broad philosophic agreement between improvement-oriented supervision and due process concerns." Neither the time commitment nor the priority rating assigned by the district to supervision and evaluation will necessarily be increased by attention to due process concerns.

6 **Neill, Shirley Boes, and Custis, Jerry.** *Staff Dismissal: Problems & Solutions. AASA Critical Issues Report.* Arlington, Virginia: American Association of School Administrators, 1978. 80 pages. ED 172 417.

Although superintendents and personnel directors estimate that 5 to 15 percent of the teachers in their districts give inadequate performance, less than .5 percent of the 2.1 million teachers in the United States are dismissed each year for not meeting district standards. Many factors contribute to this discrepancy, say Neill and Custis in this comprehensive report.

Administrators are often reluctant to tread through the complex procedures required for dismissal or are uncomfortable taking negative action against any employee. Often, too, administrators are "unclear about the way that courts view dismissal" and have little practical court experience. To help administrators in the difficult task of dismissal, Neill and Custis discuss at length many of the legal aspects of the dismissal process, using dozens of case studies to illustrate their points.

In general, courts accept dismissal for two categories of causes: incompetence and "misbehavior and counterproductive conduct." Dismissal for incompetence is usually the more difficult, requiring notice to the teacher, time to improve, and complete documentation. A separate chapter is devoted to the legal safeguards necessary for due process to be satisfied.

Before dismissal proceedings are begun, administrators should consider some alternatives to dismissal, such as improving or retraining teachers and counseling incompetent teachers out of the system with, perhaps, some bonus pay "to sweeten the easing out process." Dismissal can also be avoided by better screening at hiring time and careful decisions to grant tenure.

Evaluation—called by some "the heart of the teacher dismissal

process"—is discussed as both an important part of the teacher improvement program and as a necessary tool for making personnel decisions. Included in this excellent publication are three chapters that discuss staff dismissal in times of declining enrollment.

7 **Pellicer, Leonard O., and Hendrix, O. B.** "A Practical Approach to Remediation and Dismissal." *NASSP Bulletin,* 64, 434 (March 1980), pp. 57-62. EJ 217 709.

A common dilemma of principals is deciding what to do about teachers who are not meeting job expectations. To help simplify the process of remediation and dismissal, the authors here present "a blueprint for principals" that both ensures due process for teachers and encourages professional and ethical conduct by principals.

Once a teacher's shortcomings are confirmed by both the principal and "an independent, impartial observer," a remediation program should be planned and implemented cooperatively by the teacher and principal. To help in this process, a six-step "diagnostic prescriptive approach to remediation" is outlined by the authors and illustrated with a step-by-step example.

First, deficiencies are identified as specifically as possible and then "keyed to some widely recognized standard of professional performance," such as the "Professional Practices Council Standards" of Florida. Next, the principal and teacher work together to develop a set of objectives for improvement, identify the strategies and resources that can be used to reach the objectives, and establish a time frame for implementation and achievement of the objectives.

During the entire remediation effort, the principal must both demonstrate and document that "he or she has provided adequate and appropriate assistance, resources, and encouragement." A sincere, good faith effort at remediation is absolutely essential, the authors emphasize.

If remediation is not successful, the principal may decide that dismissal is necessary. To demonstrate both due process and good faith, the employee's personnel file should contain specific written information, including evidence of the deficiencies from one or more educators; recommendations from the principal to the teacher for improvement or correction of each deficiency, including strategies, resources, and time frames for corrections; and evaluations reflecting the deficiencies.

8 **Place, Roger A.** "Removing the Incompetent Practitioner." Paper presented at the American Association of School Administrators annual convention, Atlantic City, February 1974. 4 pages. ED 088 237.

Because of the need to assure due process for teachers, the removal of incompetent practitioners requires a tremendous amount of administrative time, effort, and paperwork. As a case in point, Place here describes the evaluation and dismissal procedures practiced by the Norfolk (Virginia) Public Schools.

The process begins with the principal's recognition of "significant deficiencies" in an instructor's teaching. The principal must then confer with the teacher, with emphasis placed "on cooperative analysis of the deficiencies by the teacher and principal." A letter summarizing the conference is sent by the principal to the teacher and to the central office.

A "preliminary program for improvement" is formulated by the teacher and the school's staff and then monitored with written observations and carefully documented conferences with the teacher. Some teachers, notes Place, may "construe this intensive assistance as harassment and desire that it cease." In such a case, the teacher must submit a request in writing, and the number of observations and conferences must be reduced to fulfill only a monitoring function.

In December of each year, the "Teacher Efficiency Evaluation Committee," composed of central office administrators, meets to review the performance of marginal teachers. Following discussions with the principal and central office staff and after "considerable deliberation," the committee formulates recommendations for each case. For first-time cases, the most common recommendation is that a "formal, detailed program for improvement" be developed and implemented by the principal. After implementation and careful monitoring of this plan, which includes substantial involvement by the central office staff, the committee again reviews each case; if dismissal is recommended, a hearing is held before the school board.

9 **Roney, Robert K., and Perry, Irma O.** "Tenure Laws and Incompetency." *NASSP Bulletin,* 61, 406 (February 1977), pp. 45-50. EJ 160 385.

Administrators must take several vital steps to ensure that a dismissal case is both "bonafide and can be clearly produced." To establish a bonafide case, there must first be "incompetence," and to have incompetence there must first be a definition of competence. Vague as this term is, the authors maintain, the lack of a reasonable definition will cause dismissal cases to fail.

Courts will accept a definition of incompetence as long as it "is clearly stated so that it is reasonable to expect that a person knowledgeable in the profession could accurately and fairly interpret it." For example, if an administrator feels that a teacher is not applying acceptable methodology, that opinion must be backed up with supportive data from the educational literature or from other educators.

Once discrepancies between a teacher's performance and accepted practice have been identified, the administrator has a responsibility to inform the teacher of these discrepancies and help

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him or her improve. But if continued evaluation indicates that the teacher has failed to come up to standards after assistance has been given, the board and administrators should move to dismiss the teacher.

When dismissal actions are taken against teachers, state statutes must be strictly adhered to. The board must furnish proper and sufficient notice of dismissal actions against a teacher, and tenured teachers must be provided with a written list of charges against them. The hearing must also be sufficient in the eyes of the court, and teachers may be represented by legal counsel if they choose.

10 **Rosenberger, David S., and Plimpton, Richard A.** "Teacher Incompetence and the Courts." *Journal of Law and Education*, 4, 3 (July 1975), pp. 469-86. EJ 122 515.

Competency is an inherently vague concept, because so much of what is considered to be competent behavior is the manifestation of something even vaguer—common sense. As such, the authors report, the courts "have been more disposed to rule teacher incompetence in a broader context, according judgment on the unique facts of the case."

This article is a review of dozens of incompetency cases brought against tenured teachers. It is designed to give school administrators some idea of the charges and evidence that may be acceptable in such cases.

When boards prepare charges indicating incompetency, the reasons given must be fairly specific, but "they are sufficient if they are made in simple language and are broad enough to fairly advise the employee of their nature" so that the employee can prepare a defense. Acceptable causes for dismissal fall into the four categories of knowledge of subject matter, teaching methods, effect on pupils, and personal attitude. For each of these causes, the authors review many individual cases and the specific reasons for dismissal used in each.

The evidence necessary to show incompetence is reviewed in a like manner. Evidence is generally presented through testimony. Professional educators such as principals, teachers, and superintendents are the most common witnesses, and their testimony "is generally receivable." Testimony from students is also acceptable, though much less prevalent, while testimony from fellow teachers and community members is quite rare in case law. Also reviewed are charges and evidence of incompetence that have failed to gain court acceptance.

11 "Why School Boards Can't Simply Fire Poor Teachers —and What to Do about It." *Updating School Board Policies*, 8, 10 (October 1977), pp. 1-4, 6. EJ 167 819.

Before turn-of-the-century legislatures passed tenure laws to protect teachers, school boards often treated teachers in an unjust, capricious manner. Today, however, many school administrators and laymen claim that "tenure laws have outlived their purpose" and that they "permit incompetent teachers to stack up in school corridors like so much dead wood." Although a trend to modify or even abolish tenure laws was predicted in the early 1970s, the trend never materialized. Tenure laws continue to grow stronger, not weaker.

Tenure, however, is an oft misunderstood concept, states this article. Contrary to the popular conception, "tenure is *not* a lifetime contract." Instead, it is simply a guarantee of due process for teachers, giving them assurance that they will not be fired without specific, verifiable charges being presented and both a fair hearing and provision for appeal being offered.

Tenure can be favorably administered, this article contends, through "strong board policies on staff evaluation and dismissal." A consistent and reasonable evaluation process, combined with honest efforts to help teachers improve their teaching, are the keys to a successful evaluation process. Even teacher unions will welcome the opportunity to remove dead wood from their ranks, as long as the steps of due process are followed religiously.

Included with this article is a useful set of guidelines regarding the dismissal of tenured teachers, compiled by school law and personnel specialists. For example, guidelines must be specific, and data on deficiencies must be extensive, specific as to dates and times, and well documented. Several other guidelines detail additional legal responsibilities the board must meet in the dismissal process.

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